

EXHIBIT 14

REDACTED

1
2 UNITED STATES DISTRICT COURT
3 FOR THE WESTERN DISTRICT OF WASHINGTON
4 AT SEATTLE

5
6 IN RE VALVE ANTITRUST LITIGATION

7
8 Case No. 2:21-cv-00563-JCC
9

10
11 April 18, 2024
12 9:08 a.m.

13 *** HIGHLY CONFIDENTIAL --
14 ATTORNEYS' EYES ONLY ***
15

16 DEPOSITION of STEVEN SCHWARTZ,
17 pursuant to Notice, held at the offices of
18 MONTGOMERY, MCCrackEN, WALKER & RHOADS
19 LLP, 437 Madison Avenue, New York, New
20 York before Wayne Hock, a Notary Public of
21 the State of New York.
22
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25

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* * *

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2 used together.

3 Q. Would a mouse and a computer be
4 examples of that?

5 A. Probably, although the link
6 between a mouse and a computer is probably
7 not as strong as they once were. So
8 certainly they were surely complements at
9 one time. Whether they are now, because
10 of track pads like on that laptop, is not
11 as clear.

12 Q. If the price of a good goes up,
13 does the demand for the complement good go
14 down?

15 A. I would expect ordinarily if A
16 and B are complements, if the price of A
17 goes up, the quantity demanded of B goes
18 down.

19 Q. Do the prices of games on other
20 stores affect the prices on Steam?

21 A. In some ways, that's why we're
22 all here.

23 Because there are parity
24 requirements, price differences on a given
25 game between stores, as I understand it,

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2 do not ordinarily persist. Yeah, I'll
3 leave it at that.

4 Q. Have you looked into that
5 question?

6 A. To the extent that that issue is
7 discussed in the documents and in the
8 other materials in the record of the case,
9 yes. I have not done at this point a
10 pricing study or anything of that sort.

11 Q. By pricing study, you mean you
12 haven't studied the prices on Steam for
13 games as compared to the prices on other
14 platforms?

15 A. Not in any systematic way, no,
16 not at this point.

17 Q. Do prices on -- of games on
18 consoles affect prices on Steam?

19 A. I've not seen any evidence that,
20 when developers set prices for games on
21 consoles, that they are affected in any
22 systematic way by prices of those same
23 games on Steam or vice versa.

24 Q. Did you look into the question?

25 A. I have looked at information in

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2 hundred seventy-five and three hundred
3 seventy-six of your report.

4 A. I'm there. I'm sorry.

5 Q. Now, in figure six of three
6 hundred seventy-five, you have a list of
7 publishers. And those publishers -- tell
8 me, what is that list of publishers, in
9 your view?

10 A. So to understand figure six, you
11 need to understand the context. This is
12 part of an analysis of the but-for market
13 share, section 8.3.4 of my report
14 beginning at paragraph three hundred
15 seventy. And figure six represents the
16 assessment of what the market shares were
17 for this set of publishers during the
18 period 2008 to 2012 for their games sold
19 on Steam, and that includes Valve.

20 Q. And does it include -- so in
21 your opinion, these publishers would be
22 selling -- would create platforms and in
23 the but-for world they would be selling
24 games, both first party and third party?

25 A. So I would -- I would refer you

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2 to the discussion that begins at paragraph
3 three hundred seventy-two. Three hundred
4 seventy-two points out that multiple
5 publishers -- and makes the point that
6 those are generally those with several
7 popular titles or game franchises -- tried
8 to make the transition from being a
9 developer and publisher to being a
10 distributor, and I identify some of the
11 ones that have tried to do that.

12 Paragraph three hundred
13 seventy-three sets out the premise of the
14 but-for world which is that -- and I'll
15 read it -- "the newly entering or existing
16 fringe platforms would have been able to
17 better attract third party PC content by
18 offering publishers a greater share of
19 transaction value so that publishers could
20 offer their games at lower prices on these
21 platforms. These lower prices would in
22 turn help to attract gamers to the
23 platform. But for Valve's alleged
24 anticompetitive conduct, publishers that
25 continued to operate their distribution

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2 platforms would likely have garnered a
3 larger share of the market, and it's
4 likely that at least some of the
5 publishers that stopped operating their
6 distribution platforms would have
7 continued to operate their platforms.
8 Therefore, the but-for world would also
9 include publishers that operate or
10 previously operated PC game distribution
11 platforms as competitors to Steam".

12 Q. Am I right that you use the
13 market shares that you derive here as an
14 input to your damages model?

15 A. The Steam market share, yes.

16 Q. Not an output of the damages
17 model but an input to the damages model?

18 A. It's an input to the damages
19 model.

20 Q. So where did you come up with
21 the idea of using publishers' share of
22 their own games sold on Steam between 2008
23 and 2012 as a way of predicting what
24 Steam's market share would be in the
25 but-for world between 2017 and today?

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2 A. Unfortunately, Valve never gave
3 us the natural experiment by operating in
4 a but-for world that was free of the
5 alleged anticompetitive behavior. So we
6 needed to develop a reasonable proxy for
7 what that might have looked like, and
8 recognizing that the third-party
9 publishers were likely to have come as
10 Valve did, as Steam did from somebody who
11 is a game developer and a first-party
12 publisher, the best evidence we had of the
13 relative strength of those various
14 alternative platforms and more importantly
15 where Valve would have resided would be to
16 look at the period when all of these
17 publishers were listed games on Steam and
18 before they decided to go and operate
19 their own distribution platform. And it
20 was the best and most reasonable proxy
21 that was available to us given that Valve
22 never allowed us to have a clean period
23 absent the behavior that's at issue here
24 that's being challenged where we could
25 observe what -- what those but-for market

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2 shares might have looked like.

3 Q. Are you aware of any support in
4 the peer-reviewed literature for using
5 publishers' shares of their own games on
6 somebody else's platform as a proxy for
7 what their market share would be in the
8 but-for world of selling third-party
9 games?

10 A. Well, generally speaking, the
11 peer-reviewed literature doesn't focus on
12 issues like this in litigation. It's
13 generally not a subject that academics are
14 interested in for their academic writing.
15 But it is within the literature that
16 focuses on damages calculations. The use
17 of benchmarks and proxies is a valid and
18 reliable method, that's what this is, and
19 I believe this is a valid and reliable
20 benchmark and proxy, so I think it's a
21 perfectly appropriate and reasonable way
22 to proceed.

23 Q. Has the concept of using sales
24 on a video game third-party platform,
25 Steam here, ever been used before as a

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2 proxy for what a video game company might
3 sell by way of third-party games ten years
4 down the road?

5 MR. LERAY: I object to form.

6 THE WITNESS: I am not aware of
7 a similar circumstance in a litigation
8 setting where that would have been an
9 option, so I can't say for sure that
10 it hasn't happened. I'm just not
11 aware of it. But I think this is a
12 very straightforward use of proxies,
13 benchmarks, whatever you want to call
14 them, and that has been used obviously
15 in many contexts many times before.

16 Q. So your opinion is that Steam's
17 market share in 2017 would be [REDACTED]
18 percent?

19 A. My opinion is that, in a but-for
20 world that was free of the PMFN in which
21 other platforms were free to compete on
22 the merits both on the basis of price and
23 content where there was no limit to that
24 competition as a result of Valve's
25 policies and competition on the merits was

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2 allowed to occur, that the but-for market
3 share that Steam would realize is
4 approximately [REDACTED] percent, [REDACTED]
5 percent. That is the best estimate of
6 what would be the but-for outcome in a
7 market unencumbered by Valve's behavior
8 that's at issue in this case.

9 Q. But your basis for that [REDACTED]
10 percent is figure six; correct?

11 A. Figure six displays what the
12 market share is based on the analysis that
13 I described in the report.

14 Q. And you believe that in the
15 but-for world, Steam's market share would
16 have been the same between 2017 and 2024;
17 correct?

18 A. I think the damages period right
19 now is through 2021, but I believe that
20 that is the best and most reasonable
21 estimate of what Steam's market share
22 would be in the but-for world and is
23 appropriate to use it as I've done for
24 purposes of calculating damages. It's all
25 common evidence, it's all the same

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2 Q. Let's go on for another five or
3 ten minutes, if that's okay.

4 Do you have a method to predict
5 which successful game developers will, in
6 your view, create a successful platform in
7 the but-for world and which ones won't?

8 A. No, and I don't need to. What I
9 need to know is that there is going to be
10 increased competition, and as a result of
11 that increased competition from these
12 additional third-party distribution
13 platforms, Valve will be compelled by
14 competitive pressure to compete on price
15 with developers and will lower the
16 commission rate, and vault of the lower
17 commission rate, game prices will be
18 reduced and both consumers and developers
19 will benefit and there will be robust
20 competition.

21 Q. Do you believe that in the
22 but-for world, [REDACTED] will operate a platform
23 with a market share of [REDACTED] percent
24 between 2017 and 2021?

25 A. I don't know and I don't need to

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2 know. It doesn't -- what I need to know
3 is what the but-for -- approximate but-for
4 market share is for Valve who comprises
5 the remaining roughly [REDACTED] percent
6 of the market and how that's distributed
7 across the various platforms is not an
8 essential element of my analysis. What is
9 important is to get an estimate of the
10 approximate size of Valve within the
11 marketplace and understand that the
12 elimination of the PMFN is going to lead
13 to entry, effective entry, competition,
14 and a greater number of platforms in the
15 marketplace. But it's not necessary for
16 me to know who those are and what each
17 specific platform's share would be.

18 Q. So you're saying, for example,
19 that [REDACTED] share could be higher than [REDACTED]
20 percent and [REDACTED] share could be
21 lower than [REDACTED] percent?

22 A. What I'm saying is that there
23 will be other platforms that will comprise
24 the [REDACTED] percent of the rest of the
25 market. Whether it is comprised of [REDACTED],

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2 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
3 [REDACTED] and [REDACTED] only, whether it
4 will be some subset of this group plus
5 others who may have entered and failed or
6 thought about entering and chose not to is
7 not what is important. What is important
8 is the estimate of the approximately [REDACTED]
9 percent market share. That's what flows
10 through to the damages analysis.

11 Q. Will [REDACTED] market share be
12 approximately [REDACTED] percent in the but-for
13 world?

14 A. I'll give you the same answer
15 that I just gave: I don't know and it
16 doesn't matter. What matters is the [REDACTED]
17 percent for Valve. How the remaining [REDACTED]
18 percent is distributed among competing
19 platforms is not something that I need to
20 determine, it's not necessary as a part of
21 my analysis for the damages analysis, so
22 it's not something that I need to analyze
23 or predict.

24 Q. How are you able to predict
25 Valve's share at [REDACTED] percent when you're

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2 not able to predict [REDACTED] share at
3 [REDACTED] percent?

4 A. Because what I'm saying is that,
5 within this more competitive market,
6 Valve's share will be about [REDACTED]
7 percent, [REDACTED] percent. How the
8 remaining share is divided up and among
9 whom isn't important. I don't need to
10 know that for my damages analysis. What I
11 need to know for my damages analysis is
12 what Valve's but-for share would be. Who
13 comprises or takes up the remaining [REDACTED]
14 percent doesn't matter for purposes of the
15 damages calculation.

16 Q. But the basis for your
17 estimating the market share of every one
18 of these companies on figure six is the
19 Steam revenue that those companies
20 generated that's listed in figure six;
21 correct?

22 A. Yes.

23 Q. So your basis for predicting the
24 revenue share in column three of figure
25 six is exactly the same for Valve as it is

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2 for every other company on that list;
3 correct?

4 A. I'm sorry, repeat that for me?
5 I'm not sure I understood that.

6 Q. Yes.

7 The revenue shares that you
8 derive in figure six in the right-hand
9 column, [REDACTED] Valve, [REDACTED] for [REDACTED],
10 those are all simply derived by comparing
11 the Steam revenue that's listed in the
12 Steam revenue chart on figure six;
13 correct?

14 A. It is based on the revenue from
15 the Steam platform on the sale of the
16 games during this period and -- during
17 this five-year period, and that's the best
18 predictor we have for what Valve's market
19 share would be in a but-for world. That's
20 the only parameter I need for the damages
21 analysis.

22 The specifics about how the
23 remaining share is divided up in the
24 but-for world is not something that I need
25 for my damages analysis or any other part

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2 of my analysis.

3 Q. Your basis for thinking that
4 Steam will have a [REDACTED] percent revenue
5 share in the but-for world is because its
6 sales on figure six between January, 2008
7 and December, 2012 was [REDACTED] [sic]
8 [REDACTED]; correct?

9 A. [REDACTED]
10 [REDACTED].

11 Q. I'm sorry.
12 Let me rephrase that.
13 Your basis for thinking that
14 Steam's revenue share of [REDACTED] percent will
15 be because Valve's sales of its own games
16 on Steam between January, 2008 and
17 December, 2012 were [REDACTED]; correct?

18 THE WITNESS: Read that one back
19 to me again, please.

20 (Whereupon the requested portion
21 was read back by the reporter)

22 THE WITNESS: I would agree
23 that's how the calculation is done.

24 Q. Your basis for thinking that
25 [REDACTED] share of [REDACTED] percent is because

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2 it sold [REDACTED] [REDACTED] worth of games, its
3 own games, on Steam between January, 2008
4 and December, 2012; correct?

5 A. That is the revenue share for
6 [REDACTED] during that period. That
7 parameter does not fit in -- does not
8 implicate my damages analysis.

9 Q. I realize it does not implicate
10 your damages analysis.

11 But would you agree with me that
12 your basis for determining the revenue
13 shares of each one of the companies on the
14 list of figure six is exactly the same?

15 A. I'm sorry, I don't understand
16 that question.

17 Can you try it again?

18 Q. Yes.

19 You used the same method to
20 derive a revenue share for every one of
21 the company that's listed on figure six;
22 correct?

23 A. I would agree the calculation is
24 the same for each of these.

25 Q. And the method that produced the

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2 numbers and the calculation is the same
3 for each of them; correct?

4 A. I would agree that the revenue
5 shares are all calculated by division and
6 the division formula is the same for each
7 of the publishers.

8 Q. And because you used the same
9 method and the same calculations for
10 derives each one of the revenue shares
11 that's listed in figure six, would you
12 agree with me that you can't be any more
13 certain of any one than the other in terms
14 of what will prevail in the but-for world?

15 A. I think I'm understanding your
16 question and the answer is no. I think
17 had I -- it would have been perfectly
18 adequate for purposes of my analysis if,
19 in figure six, I had two rows, Valve and
20 other, and a footnote that said other is
21 comprised of the sales of these other
22 seven publishers because what I am
23 confident of is that the [REDACTED] percent is
24 accurate and that it is a reasonable proxy
25 for what Valve would obtain as its market

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2 share in a but-for world where it no
3 longer imposes the PMFN, and that the
4 remaining share would be taken up by other
5 third-party distributors. Whether it is
6 these entities or others doesn't matter.
7 I don't need to specify who all the other
8 competitors are.

9 Q. Would you agree with me --

10 MR. LERAY: Charles, hold on, the
11 witness asked for a break like ten
12 minutes ago.

13 MR. CASPER: Could I ask one more
14 question?

15 MR. LERAY: Sure.

16 Q. Would you agree that the
17 reasonableness of your basis for believing
18 that Steam will have a [REDACTED] percent
19 revenue share in the but-for world is
20 exactly the same as your basis for
21 believing that [REDACTED] will have a [REDACTED]
22 percent revenue share in the but-for
23 world?

24 A. In the but-for world, these
25 other seven competitors may or may not be

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2 competing. What I know is that the
3 remaining competitors, whether it is these
4 seven or these seven joined by others or
5 some number lower than that, will have
6 [REDACTED] percent. How that will be
7 distributed in the end does not matter.
8 What matters substantively is that Valve
9 will have roughly [REDACTED] percent of the
10 market, [REDACTED] percent of the market.

11 Q. Could you please answer the same
12 question I asked, which is: Is your basis
13 for believing that [REDACTED] percent will be
14 Steam's revenue share in the but-for world
15 exactly the same as your basis for
16 believing that [REDACTED] percent will be
17 [REDACTED] revenue share in the but-for
18 world?

19 MR. LERAY: Objection. You said
20 one more question. He already
21 answered it. You just repeated the
22 question again.

23 MR. CASPER: I didn't get an
24 answer, so I'd like the witness to
25 answer this question.

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2 THE WITNESS: I mean, I'm not
3 sure how to answer it in any way than
4 I did.

5 Let me try this and see if this
6 makes my point clearer.

7 I don't know nor do I need to
8 know what [REDACTED] or [REDACTED] or
9 [REDACTED] or [REDACTED] or [REDACTED] or [REDACTED]
10 [REDACTED] or [REDACTED] do in the but-for
11 world. I don't need to know whether
12 any of them would have had some form
13 of distribution. All I need to know
14 is that all the remaining competitors
15 would have about [REDACTED] percent of
16 the market, [REDACTED]. How that's
17 allocated I don't know. I do know
18 that Valve exists in the but-for
19 world. I do know that, without the
20 PMFN, Valve would continue to operate
21 as a platform. And so knowing that, I
22 have a reasonable basis for all the
23 reasons that I explained in this
24 section of my report to use this as a
25 conservative proxy for what its

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2 revenue share would be.

3 MR. CASPER: Let's take a break.

4 THE VIDEOGRAPHER: The time is
5 11:56 a.m., and we're going off the
6 record.

7 (Whereupon a break was taken)

8 THE VIDEOGRAPHER: The time is
9 12:19 p.m., and we're back on the
10 record.

11 MR. CASPER: Could we mark tab
12 seventeen as Exhibit 4, please.

13 (Whereupon, a document entitled
14 Top Publishers By Net Sales on Steam
15 was marked Schwartz Exhibit 4
16 for identification.)

17 Q. Dr. Schwartz, I'm showing you
18 what's been marked as Exhibit 4. And it's
19 a chart that we prepared using your data
20 of the top publishers by net sales on
21 Steam between January, 2008 and December,
22 2012. And it's the same data that you use
23 in figure six on page two hundred five of
24 your report that we were just talking
25 about.

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2 whether it is an exercise of market power
3 to compel people to play the game on the
4 Internet as opposed to giving them the
5 option to make the choice to do so or not.
6 That's the exercise of market power.

7 Again, whether that is
8 anticompetitive is a question that I have
9 not analyzed, but it is surely an exercise
10 of market power.

11 Q. So is it your testimony that
12 companies today who sell a product that
13 requires an Internet connection are
14 exhibiting market power?

15 A. If they sell a product that
16 requires an Internet connection and don't
17 allow people who have purchased an earlier
18 version of that product that does not
19 require an Internet connection to
20 nonetheless use the Internet connection,
21 that would be an exercise of market power.

22 Q. Okay.
23 What's the World Opponent
24 Network?

25 A. I'm sorry?

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2 Q. What is the World Opponent
3 Network, if you know?

4 A. I don't know.

5 MR. LERAY: We have been going a
6 little over an hour.

7 THE WITNESS: I mean, if we're
8 at a good stopping point, we can stop.
9 If you want to finish the line, we can
10 do that, too.

11 MR. CASPER: If you'd like to
12 take a break now, it would be fine.

13 THE WITNESS: If we don't take a
14 break now, are you going to be in a
15 better stopping point in ten minutes?

16 MR. CASPER: This is fine.

17 THE WITNESS: Okay.

18 THE VIDEOGRAPHER: The time is
19 2:44 p.m., and we are going off the
20 record.

21 (Whereupon a break was taken)

22 THE VIDEOGRAPHER: The time is
23 3:04 p.m., and we're back on the
24 record.

25 Q. Good afternoon again, Dr.

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2 is activated and the user begins to play
3 the game on Steam.

4 Q. So you reported in your report
5 at a couple of different places that the
6 effective revenue share of games for
7 certain periods of time was [REDACTED] percent
8 and then for another period of time, it
9 was [REDACTED] percent, taking into account the
10 lower revenue tiers that Valve introduced
11 in 2018.

12 Is that right?

13 A. If you're thinking of the same
14 thing I'm thinking of, yes, the lower
15 effective rate would reflect the tiering
16 that went into effect in 2018.

17 Q. When you calculated those
18 effective revenue shares for developers
19 selling a game on Steam, did you take
20 Steam keys into account?

21 A. No, because that wasn't a
22 transaction that occurred on Steam.

23 Q. So you ignored the revenue that
24 the developers get when they sell their
25 Steam keys in calculating what percent of

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2 their revenue they paid to Valve as
3 revenue share?

4 A. I didn't ignore it. It's part
5 of a different question. The question on
6 the effective rate is what's the effective
7 rate that publishers paid on transactions
8 that occurred on Steam. The question
9 you're I think getting at is an entirely
10 different, and I'm not sure whether it's a
11 relevant question.

12 Q. If a publisher sells half of
13 their games on Steam and the other half by
14 using Steam keys, what is that publisher's
15 effective revenue share?

16 MR. LERAY: I object to form.

17 THE WITNESS: I'm not sure that
18 that's a meaningful metric because the
19 revenue share is -- by the term itself
20 the way the revenue is shared when a
21 transaction takes place on Steam. So
22 their revenue share is one hundred
23 percent for Steam keys and a 30/70
24 split for transactions that occur on
25 Steam.

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2 Q. And if you were to look at it
3 from the point of view of the publisher
4 and how much money they get to keep from
5 games they sell that are ultimately played
6 on Steam, the publisher gets more money in
7 their pocket if they sell more Steam keys
8 than if they sell fewer Steam keys,
9 correct, all else being equal?

10 A. If I'm understanding what you're
11 asking, I think it's a tautology. If they
12 sell a Steam key, they get to keep all of
13 the revenue. If they sell on Steam
14 directly, they keep seventy percent of the
15 revenue. And I would agree with you a
16 hundred percent is more than seventy
17 percent.

18 Q. And so if you look at effective
19 revenue share from that perspective, that
20 is how much the developer gets to keep of
21 the money that they get for selling the
22 game, Steam keys changes the effective
23 revenue share; doesn't it?

24 MR. LERAY: I object to form.

25 THE WITNESS: So I think I

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2 understand what you're asking.

3 As the mix of sales changes
4 between sales on Steam and sales
5 through Steam keys, the revenue to the
6 publisher changes. I would certainly
7 agree with that.

8 Q. So when you're doing your
9 but-for world calculations, what
10 assumptions do you make of the
11 availability and use of Steam keys in the
12 but-for world?

13 A. I have assumed that Valve will
14 continue to make Steam keys available in
15 the but-for world, but I've not made any
16 assumptions about the extent to which
17 Steam keys will be made available or
18 whether any of the policies around Steam
19 keys will change other than the
20 elimination of the price parity
21 requirement with respect to Steam keys.

22 Q. So as far as you're concerned,
23 in the but-for world, Valve might change
24 its policies regarding Steam keys?

25 A. In the but-for world, they would

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2 necessarily have to change their policy
3 with respect to price parity because, in
4 the but-for world, there's no PMFN.

5 Whether they change other
6 policies with respect to Steam keys,
7 including where they can be utilized, with
8 respect to which outlets, how many they
9 issue, they might change their policies.
10 There's no way to know, nor does it matter
11 for purposes of my analysis.

12 Q. So throughout your report you
13 say that the -- what you call the PMFN
14 caused Steam to be more successful than it
15 otherwise would have been.

16 Is that a fair statement from
17 your report?

18 A. I -- I would say it a bit
19 differently. I would say that, because of
20 Steam's monopoly power, it's able to
21 operate under a PMFN that controls -- that
22 applies to both content and price. As a
23 result of the implementation of that PMFN,
24 Steam creates barriers to competitive
25 entry and effect of competition on the

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2 its first mover advantage and challenge
3 whatever network effects it has. That's
4 undeniable. If I can't compete on price
5 and I can't compete on content
6 differentiation, I have no means by which,
7 as a competitor, can effectively compete
8 with Steam. My hands are tied behind my
9 back. So by taking away from the
10 mechanisms by which effective entry and
11 effective competition from those entrants
12 would occur, I have artificially protected
13 myself from whatever challenges they
14 present. That's undeniable.

15 Q. So in order for the so-called
16 PMFN to work, the developers -- the
17 publishers have to know about it; right?

18 A. In order for the PMFN to work,
19 there have to be enough publishers to know
20 about it that you have substantial
21 compliance with it such that effective
22 entry is precluded on the part of a
23 competing platform.

24 Q. And what evidence -- I've read
25 your report and I've seen a list of

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2 e-mails that were written by Valve
3 employees and by others. We of course
4 have the Steam key rules and guidelines on
5 the so-called price parity side.

6 What evidence do you have that
7 you considered that those mechanisms made
8 developers and publishers aware of the
9 so-called PMFN?

10 MR. LERAY: I object to form.

11 Is this in addition to what's in
12 his report?

13 THE WITNESS: I was going to
14 say, since I'm sure you've read my
15 report, you know that there's
16 substantial discussion of that in the
17 report, including the fact that there
18 are some examples, and they are just
19 examples, they by no means exhaust the
20 universe, of large publishers who are
21 called on the carpet for violating
22 price or content parity requirements
23 with and without Steam keys, sometimes
24 resulting in games being delisted.
25 And when there is the show of force,

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2 to borrow a probably not so great
3 metaphor right now, there is
4 information conveyed to publishers
5 generally that if a really large
6 developer can be subject to a price
7 parity requirement and be punished in
8 a serious way for a price parity
9 requirement violation then, number
10 one, it says that it's something that
11 Steam is serious about.

12 Number two, it says it's
13 something that I need to comply with.

14 And there is ample evidence that
15 -- I didn't need to cite it in the
16 report, I could have, of developers
17 talking to one another about it and
18 communicating that there are these
19 policies. And since the requirement
20 is that there be substantial
21 compliance and not one hundred percent
22 knowledge across the board, that's
23 really all you need to make the PMFN a
24 binding constraint on the behavior of
25 developers when setting price or

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2 putting content into versions of
3 games.

4 Q. Well, in the e-mails that are
5 cited in your report, how many publishers
6 did those go to?

7 A. I haven't counted.

8 Q. Could you count them on two
9 hands?

10 A. I don't know.

11 Q. Would you agree with me that
12 it's a very small number?

13 A. It wouldn't surprise me if it
14 is. But the point is those are exemplars
15 of what happens. Those don't exhaust the
16 universe. And I think again I could have
17 cited and perhaps will subsequently
18 substantial evidence of general knowledge
19 within the developer/publisher community
20 of the requirement for price parity.

21 Q. Have you considered the
22 testimony from [REDACTED] witnesses in this
23 case that they don't know about price
24 parity?

25 A. I am aware of the testimony. We

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2 looked at least one piece of it today. I
3 don't know what else you have in mind as
4 I'm sitting here. I'm also aware of
5 documents in which they explicitly
6 acknowledge price parity. That's a piece
7 of the body of evidence that I considered.

8 Q. How many publishers, roughly
9 speaking, sell games on Steam?

10 A. I have the number somewhere in
11 the report. It's a large number. I don't
12 recall.

13 Q. Up in the tens of thousands;
14 correct?

15 A. It's in the thousands for sure.
16 I don't recall the number.

17 Q. What evidence do you have that
18 these thousands or tens of thousands of
19 publishers were made aware of Valve's
20 so-called PMFN?

21 A. Any developer who sold with
22 Steam keys is aware of it. They're aware
23 explicitly of the content parity
24 requirement, they're aware of the general
25 price parity requirement that's included,

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2 and they're aware of the specific price
3 parity requirement with respect to Steam
4 keys, so certainly that group would be
5 included.

6 There is evidence of large
7 developers generally being aware of it and
8 acting on it.

9 Q. And what is that evidence?

10 A. It's -- examples of it are cited
11 throughout the report. And there is also
12 evidence in other documents beyond what's
13 cited in the report of developers asking
14 about price parity, asking if they can
15 sell with a different feature, examples of
16 enforcement or communication from Steam to
17 developers, pointing out what they
18 perceive to be some violation of either
19 the price or content parity requirements.
20 So I think the record is replete with
21 evidence that developers in the main knew
22 about this, that Steam communicated it
23 both normally through, for example, the
24 Steam key agreement and informally through
25 e-mails and reports of telephone calls.

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2 Q. And are you telling me that you
3 rely on evidence that's not in your report
4 for these things?

5 A. It is evidence that may not be
6 cited in footnotes, but it would be
7 included in attachment A2.

8 MR. CASPER: Can we have tab
9 twenty-five, please.

10 I'm going to show you another
11 exhibit.

12 This is tab twenty-five and this
13 will be Exhibit --

14 THE CONCIERGE: I think it's
15 seven.

16 MR. CASPER: -- seven.

17 (Whereupon, a document entitled
18 Steamworks Documentation was marked
19 Schwartz Exhibit 7 for identification.)

20 Q. Please read them.

21 A. (Reviewing).

22 MR. CASPER: For the record, I've
23 shown the witness what's been marked
24 as Exhibit 7, and it is the Steam keys
25 documentation that appears in the

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2 Steamworks documentation on the
3 Steamworks website. And one of the
4 subsections is Steam key rules and
5 guidelines.

6 Q. And what I'd like you to focus
7 on, Dr. Schwartz, now is just the Steam
8 key rules and guidelines which begin on
9 page three and go slightly into page five
10 of Exhibit 7.

11 MR. LERAY: Counsel, is this the
12 copy of the rules as they exist as of
13 today?

14 MR. CASPER: It is.

15 THE WITNESS: (Reviewing).

16 All right.

17 Q. So the Steam key rules and
18 guidelines that begin on page three, could
19 you read the first bullet point?

20 A. "You should use Steam keys to
21 sell your game on other stores in a
22 similar way to how you sell your game on
23 Steam. It is important that you don't
24 give Steam customers a worse deal than
25 Steam key purchasers".

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2 Q. That's specifically directed to
3 Steam key purchasers; isn't it?

4 A. In this document, yes.

5 Q. So a publisher reading this
6 document wouldn't have any way to think
7 that it was being asked to price a game
8 not using Steam keys in any particular
9 way; would it?

10 A. It wouldn't until it looked at
11 the agreement that it was asked to sign
12 before it could get the Steam keys.

13 Q. And you're referring to the user
14 interface that has bullet points that
15 refer to the Steam keys guidelines?

16 A. I'm referring to a document that
17 has three things that the developer needs
18 to agree that they understand, the first
19 two of which do not mention Steam keys,
20 refer to Steam generally, and the third
21 which does.

22 Q. And they get those when they're
23 being -- they're shown that user interface
24 and they agree to those three points in
25 order to get Steam keys; right?

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2 A. My understanding is that, in
3 order to get Steam keys, you have to agree
4 to those three understandings, two of
5 which do not apply to Steam keys and one
6 of which does.

7 Q. Well, you said they don't apply
8 to Steam keys.

9 Isn't it fair to say that some
10 users who are applying for Steam keys and
11 who are being asked to agree to those
12 three points will understand that those
13 three points pertain to Steam keys?

14 MR. LERAY: I object to form.

15 THE WITNESS: I think anyone who
16 reads those and reads them carefully
17 would take note of the fact that there
18 are three understandings to which they
19 need to agree. One of them mentions
20 Steam keys explicitly. Two of them do
21 not. And I think it is a fair reading
22 by a careful developer reviewing that
23 document that the expectation is that
24 the policy that's described in those
25 understandings extends beyond Steam

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2 keys. If you have a document that's
3 carefully drafted, one point of which
4 refers explicitly to Steam keys and
5 that two do not, I think it's fair to
6 infer that a careful developer reading
7 that would read them as written. And
8 one provision applies to Steam keys
9 and two apply beyond Steam keys.

10 Q. Would you agree with me that
11 some developers who are reading that
12 agreement, which they get in the context
13 of Steam keys, would understand that this
14 only governed Steam keys?

15 MR. LERAY: I object to form.
16 Calls for human psychology testimony.

17 THE WITNESS: I'll stand by my
18 previous answer. I think a careful
19 developer reading that would take the
20 language as written and would see that
21 two of the requirements do not mention
22 Steam keys and would read them as such
23 and one requirement does mention Steam
24 keys and would read it as such and
25 would conclude that the policy that's

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2 being described in those
3 understandings that they agreed to
4 comply with apply to Steam keys and
5 beyond Steam keys.

6 Q. And some of those careful
7 developers presumably would have also read
8 the Steam key rules and guidelines;
9 correct?

10 A. I would not be surprised if they
11 did.

12 Q. And the Steam key rules and
13 guidelines explicitly apply only to Steam
14 keys; correct?

15 A. I would agree that, within this
16 document, based on my reading here, that
17 the bullet points that talk about this
18 talk only about Steam keys which is not
19 inconsistent with what's in the document
20 that you and I were just talking about a
21 minute ago because that document
22 explicitly refers to Steam keys but it
23 also goes beyond it because it's got two
24 understandings that have nothing to do
25 with Steam keys.

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2 Q. So I drew from your counsel's
3 objection that you might not be an expert
4 in human psychology.

5 Am I right about that?

6 A. I would never claim that
7 expertise beyond having been a parent or
8 still being a parent.

9 Q. So if we want to know what
10 someone reading the Steam keys rules and
11 guidelines or someone reading the three
12 bullet points that we're talking about, if
13 we want to know how they understand them,
14 we really need to ask the person that's
15 reading them; don't we?

16 A. Well, if we could construct a
17 survey instrument that would be effective
18 in going back in time and capturing
19 people's understandings as of that point
20 in time and not by asking questions that
21 either invite recency bias or are
22 suggestive, either way -- and I'm not sure
23 we could write that survey -- I think the
24 best that we can do is draw reasonable
25 inferences about what conclusions would be

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2 drawn based on the plain language of the
3 document.

4 Q. And that's what you've been
5 doing here today?

6 A. That's -- I read the document on
7 its face and I think the language is
8 pretty clear and pretty plain and pretty
9 understandable.

10 MR. CASPER: Can we have tab
11 twenty-three, please. This will be
12 eight.

13 (Whereupon, an e-mail dated
14 July 12, 2013 was marked Schwartz
15 Exhibit 8 for identification.)

16 Q. I'm going to give you what's
17 been marked as Exhibit Number 8. And it's
18 an e-mail back from 2013 and it bears the
19 Bates stamp VALVE_ANT 00488944.

20 I'll give you a minute to read
21 it, if you would, please.

22 A. (Reviewing).

23 All right.

24 Q. So this is an e-mail between
25 Microsoft -- between Valve and Ubisoft

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2 did you conduct a passthrough study?

3 A. I did an analysis of passthrough
4 on Steam in response to the tiered price
5 -- introduction of the tiered price
6 structure.

7 Q. In 2018?

8 A. The tiered price structure went
9 into effect in 2018.

10 Q. And you studied one hundred
11 twenty-four games; correct?

12 A. I think it reduced down to that.
13 I think it started from a larger number
14 and then, as we made various cuts for
15 various reasons, it came down to that
16 hundred and some-odd.

17 Q. And the one hundred twenty-four
18 games that you studied, those are all
19 games that sold more than \$10 million on
20 Steam; correct?

21 A. They are all games that crossed
22 over the \$10 million threshold, so they
23 received the benefit of the reduction in
24 the rate when they crossed that threshold.

25 Q. Is that group of one hundred

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2 twenty-four games a representative sample
3 of the games that are sold on Steam?

4 A. I think it is surely not
5 representative of the games that never
6 achieved that level of sales and therefore
7 never benefitted from a price change. And
8 it may not be representative of the games
9 that achieved the higher threshold and got
10 the further reduction in rate. I have --
11 I would not -- in fact, it is explicitly
12 not a random sample. I have, based on the
13 price changes that I observe, have no
14 reason to think that I can't draw
15 inferences from which I can generalize,
16 but I haven't done a detailed study of the
17 universe of games that crossed that
18 threshold to determine whether they all
19 have the same important characteristics.

20 Q. In paragraph three hundred
21 ninety-five, you report the averages;
22 correct?

23 A. I report average and median
24 price changes in the narrative and then in
25 figure eight.

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2 provides.

3 THE WITNESS: So I've got to
4 push back on your use of the term
5 "services Steam provides".

6 Steam operates a business. As
7 part of the business, they agree to do
8 certain -- they agree to allow you to
9 play the game. What they do over time
10 is continue to provide the services
11 that they agreed to provide at the
12 time of the transaction.

13 Q. Don't they also enhance the
14 services with new services and better
15 services?

16 MR. LERAY: I object to form.
17 If you understand it, go ahead.

18 THE WITNESS: I think I do.

19 Steam, as I understand it, has
20 from time to time added features to
21 the platform. Whether those features
22 are of value to a particular consumer,
23 whether they are of value to a
24 particular developer, whether they
25 enhance the experience of the user in

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2 connection with their consumption of
3 the game or improve the experience for
4 the developer is unclear. They're
5 certainly an assertion that they
6 provide value, but there's no
7 systematic evidence of the value that
8 they apply or that they bring. But
9 it's all part of the base this is what
10 Steam does. These are all table
11 stakes for running a platform business
12 on which people are allowed to play
13 games.

14 Q. Does Amazon or Airbnb or VRBO
15 have any long-term obligation over time
16 like Steam does?

17 MR. LERAY: I object to form.
18 Go ahead.

19 THE WITNESS: You call it an
20 obligation. It's just the nature of
21 the business. The transaction is
22 completed in a shorter period of time.
23 That doesn't make -- that doesn't mean
24 that they don't incur costs in
25 facilitating the transaction and